

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Nanci E. Langley; and  
Robert G. Taub

Market Dominant Product Prices  
Inbound Market Dominant Multi-Service Agreements  
with Foreign Postal Operators 1  
Canada Post Corporation–United States Postal Service  
Bilateral Agreement (MC2010-35)  
Negotiated Service Agreement

Docket No. R2012-5

NOTICE AND ORDER CONCERNING BILATERAL AGREEMENT  
WITH CANADA POST CORPORATION  
NEGOTIATED SERVICE AGREEMENT

(Issued November 30, 2011)

I. INTRODUCTION

On November 23, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.*, and Order No. 549, that it has entered into a bilateral agreement with Canada Post Corporation (Canada Post 2012 Agreement or Agreement), which it seeks to include in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>1</sup> The Notice concerns the portion

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<sup>1</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 23, 2011 (Notice); *see also* Docket Nos. MC2010-35, R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

of a bilateral agreement with Canada Post for inbound market dominant services that the Postal Service contends is similar and functionally equivalent to agreements already included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>2</sup> Notice at 1.

In support of its Notice, the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the Canada Post 2012 Agreement.

The Postal Service also provided a redacted version of the Agreement and supporting financial documentation as a separate Excel file.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG Agreement) in the product. In Order No. 700, the Commission approved the functionally equivalent HongKong Post Agreement (HongKong Post Agreement).<sup>3</sup> In Order No. 871, the Commission approved the functionally equivalent China Post 2011 Agreement.<sup>4</sup> In

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<sup>2</sup> The Postal Service states that the Agreement is marked “Draft” because of continuing negotiation of specific terms and conditions. However, it asserts that no further substantive changes are expected concerning rates, operational terms or the financial liability provisions of the Agreement. Request at 2, n.2. The Postal Service states that it anticipates finalizing the terms of the fully executed Agreement prior to December 31, 2011. The Commission views the draft as acceptable for purposes of issuing notice of the Agreement. However, the Commission cannot base its final order in this proceeding on the draft Agreement. Therefore, to avoid delaying the final order, the Postal Service should file an executed Agreement as soon as possible. In that filing, the Postal Service shall indicate all changes between the draft agreement and the executed agreement.

<sup>3</sup> See Docket No. R2011-4, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700).

<sup>4</sup> See Docket No. R2011-7, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011 (Order No. 871).

Order Nos. 995 and 996, the Commission approved the functionally equivalent Singapore Post and Australia Post Agreements, respectively.<sup>5</sup>

*Canada Post 2012 Agreement.* The Postal Service and Canada Post, the postal operator for Canada, are parties to the Agreement. The Agreement covers, *inter alia*, the delivery of inbound Letter Post, in the form of letters, flats, small packets, parcels, bags, and International Registered Mail service for Letter Post. The planned inbound market dominant rates are scheduled to become effective January 7, 2012. Notice at 3. The Agreement has a term of 2 years commencing January 1, 2012 and ending December 31, 2013, although it may be extended for a third year. *Id.* Attachment 2 at 7-8; see *also*.pdf version at 57 (2012-2013 CPC-USPS Contractual Bilateral Agreement, Exhibit 4).<sup>6</sup> The Agreement however, may be terminated by either party without cause on no less than 90 days' written notice. *Id.* Attachment 2 at 8.

*Requirements under part 3010.* The Postal Service states that the projected financial performance of the Canada Post 2012 Agreement is provided in the Excel file included with its filing. It contends that improvements should enhance mail efficiency and other functions for Letter Post items under the Agreement. Notice at 3-4.

The Postal Service asserts that the Agreement should not cause unreasonable harm in the marketplace since it is unaware of any significant competition in this market. *Id.* at 5-6.

*Data collection plan.* Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this Agreement through its Annual Compliance Report. While indicating its willingness to provide information on mailflows within

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<sup>5</sup> See Docket No. R2012-1, Order Approving Rate Adjustment for Singapore–Post United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, November 23, 2011 (Order No. 995); see *also* Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996).

<sup>6</sup> When it files an executed copy of the Agreement, the Postal Service should confirm the effective dates of the Agreement.

the annual compliance review process, the Postal Service proposes that no special data collection plan be established for this Agreement. With respect to performance measurement, it requests that the Commission exempt the Canada Post 2012 Agreement from separate reporting requirements under 39 CFR 3055.3(a)(3) as determined in previous agreements approved as functionally equivalent agreements under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>7</sup>

The Postal Service advances reasons why the instant Agreement is functionally equivalent to the previously filed CPG Agreement, TNT Agreement, HongKong Post Agreement, and China Post 2011 Agreement.<sup>8</sup> It contends that it contains the same attributes and methodology and fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. Additionally, it states that the Canada Post 2012 Agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory. *Id.* at 8.

The Postal Service identifies specific differences that distinguish the instant Agreement from the previous agreements. It states that the Agreement provides greater specificity in the terms and products because of the parties' business experience with their previous bilateral agreements. The Postal Service states differences include specific performance-based financial incentives and adjustments to the financial model based on the specific negotiations between the parties. *Id.* at 9-10. The Postal Service contends that the instant Agreement is nonetheless functionally equivalent to existing agreements. *Id.* at 11.

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<sup>7</sup> In Order No. 996, the Commission held that "[f]uture agreements that fall within the parameters of the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product are excepted from the performance reporting requirements." Order No. 996 at 7.

<sup>8</sup> The Postal Service specifically references the differences between the instant Agreement and the TNT Agreement for comparison purposes. *Id.* at 8-11.

In its Notice, the Postal Service maintains that certain portions of the Agreement, prices, and related financial information should remain under seal. *Id.* at 11; *id.* Attachment 1.

The Postal Service concludes that the Canada Post 2012 Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 12.

## II. NOTICE OF FILINGS

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than December 14, 2011. The public portions of these filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

## III. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission establishes Docket No. R2012-5 to consider matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than December 14, 2011.

4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove  
Secretary